

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Antenna Systems & Supplies, Inc.)	File No. EB-05-SE-109
Schaumburg, Illinois)	

ORDER

Adopted: November 28, 2005

Released: November 30, 2005

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Order*, we grant in part and deny in part a request for confidential treatment of material submitted by Antenna Systems & Supplies, Inc. (“AS&S”) in response to a letter of inquiry (“LOI”).

II. BACKGROUND

2. On March 7, 2005, the Spectrum Enforcement Division (“Division”) of the Enforcement Bureau sent Sandown Wireless, a distributor of AS&S’s products, an LOI seeking information and documents concerning its marketing of cell phone jammers and multi-purpose jammers to state and local law enforcement agencies in the United States in apparent violation of Section 302(b) of the Communications Act of 1934, as amended (“Act”), and Section 2.803 of the Commission’s Rules (“Rules”).¹ On behalf of Sandown, AS&S submitted a response to this LOI on March 25, 2005.² AS&S included with its response a confidentiality request, in which AS&S asked that “all documents found within a directory (CD-ROM) and an appendix (printed) named CONFIDENTIAL or marked CONFIDENTIAL be held in confidence and not be made available for public inspection.” AS&S stated that “[t]he specific information for which confidential treatment is sought is a) customer names and addresses, b) product serial numbers and specifications, c) prices, and d) sales presentation materials.” AS&S also marked as “confidential” certain other information and documents that do not fall within any of these four categories. Specifically, AS&S marked as “confidential” its responses to questions concerning when AS&S began manufacturing and marketing the cell phone jammers, how many of the devices have been manufactured and distributed in the United States, where AS&S manufactured the devices, and whether or not it continues to manufacture these devices. Additionally, AS&S marked as “confidential” several sales invoices for its cell jammers, a letter to AS&S from a customer concerning one of its cell jammers, and a copy of a draft SAFETY Act Application³ for AS&S’s cell jammers, dated March 21, 2005.

¹Letter from Joseph P. Casey, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Keith Clark, President, Sandown Wireless (March 15, 2005) (“LOI”).

²Response from Sheldon L. Epstein, counsel for AS&S, to Katherine Power, Spectrum Enforcement Division, Enforcement Bureau (March 25, 2005) (“Response to LOI”).

³As part of the Homeland Security Act of 2002, Public Law 107-296, Congress enacted the SAFETY Act to provide “risk management” and “litigation management” protections for sellers of qualified anti-terrorism technologies and others in the supply and distribution chain. Specifically, the SAFETY Act creates certain liability limitations for

3. In support of its request for confidentiality in its March 25, 2005 response, AS&S asserted that “[t]he information comprises commercial and financial information as well as trade secret information.”⁴ In addition, AS&S stated that “the information concerns a product and technology that are subject to competition”⁵ and that “[d]isclosure of this information could harm [AS&S] by making known the names of its customers, its prices and its product information to its competitors.”⁶ AS&S also noted that it maintains physical control of its confidential information in its office, which has security safeguards designed to prevent unauthorized entry.⁷ AS&S further stated that its sales invoices are not made available to the public and that its sales presentations are restricted to potential customers who are law enforcement agencies or who are authorized distributors.⁸ Finally, AS&S asserted that “because of national security issues that are involved,” this material should never be available for public inspection.⁹

III. DISCUSSION

4. Section 0.459 of the Rules establishes a procedure by which parties may request that information or materials that they have submitted to the Commission not be routinely available for public inspection.¹⁰ This rule requires that a party seeking confidentiality provide a statement of the reasons for withholding the materials in question from public inspection and set forth the specific categories of materials for which such treatment is appropriate.¹¹ The standards of this section are governed by the Freedom of Information Act (“FOIA”), and the requesting party must show “by a preponderance of the evidence” that non-disclosure is consistent with the pertinent provision of FOIA.¹²

5. Exemption 4 of the FOIA permits the Commission, in its discretion, to withhold from disclosure any documents containing either (1) trade secrets or (2) information which is (a) commercial or

“claims arising out of, relating to, or resulting from an act of terrorism” where qualified anti-terrorism technologies have been deployed. Sellers that wish to be awarded SAFETY Act protections for such technologies must submit an application to the Department of Homeland Security.

⁴Response to LOI at 1.

⁵*Id.*

⁶*Id.* at 2.

⁷*Id.*

⁸*Id.*

⁹*Id.*

¹⁰47 C.F.R. § 0.459.

¹¹47 C.F.R. § 0.459(b). Section 0.457 sets forth the categories of records that are not routinely available for public inspection, i.e., accorded confidential treatment, and Section 0.459 sets forth the procedures for submitting requests that material or information be withheld from public inspection. For instance, Section 0.459(b)(3) provides that a request for confidentiality shall, among other things, include an “explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.” 47 C.F.R. § 0.459(b)(3).

¹²47 C.F.R. § 0.459(d). *See also* 5 U.S.C. § 552, et seq.

financial, and (b) obtained from a person, and (c) privileged or confidential.¹³ Further, commercial or financial information is privileged or confidential if either (1) disclosure of the information is likely to impair the government's ability to obtain necessary information in the future or (2) disclosure is likely to cause substantial harm to the competitive position of the person from whom the information was obtained.¹⁴ The Commission has found that "the entity or person seeking confidentiality must show that substantial competitive injury is likely to result from disclosure. While an elaborate economic analysis need not be made to establish the likelihood of substantial competitive injury, 'conclusory and generalized allegations' cannot support nondisclosure."¹⁵

6. We find that AS&S has demonstrated in accordance with our rules that *certain* of the information provided in response to the LOI contains trade secrets, commercial or financial or privileged information, the disclosure of which could result in substantial competitive harm.¹⁶ Specifically, we find that AS&S has demonstrated that its customer names and addresses are commercial information and should be accorded confidential treatment. Indeed, the Commission has acknowledged that "customer records are among the most basic business records that a company uses in furtherance of its commercial activities."¹⁷ Disclosure of AS&S's customer records could result in substantial competitive harm because its competitors could use this information to solicit its customers. Likewise, we find that disclosure of AS&S's price lists, sales invoices and sales presentation materials could result in substantial competitive harm and should be treated confidentially. AS&S explained that this information is not made available to the public and described the security measures it takes to maintain control over this information. We also grant confidential treatment to the number of devices that AS&S has manufactured and distributed in the United States. Such information could be used by its competitors to approximate its market share. Finally, we will accord confidential treatment to AS&S's draft SAFETY Act application.

7. Thus, we find that AS&S has demonstrated that the following portions of documents submitted in response to the LOI should be accorded confidential treatment:

- Response to LOI, Page 1/3 of "Confidential Answers," Responses (b) and (c);
- Response to LOI, Page 2/3 of "Confidential Answers," Response (c); and
- Response to LOI, Page 3/3 of "Confidential Answers," all of the attached documents listed in items 1-3, Invoice No. 106125 listed in item 4, and all of the attached documents listed in items 5-9.

¹³5 U.S.C. § 552(b)(4).

¹⁴*See Critical Mass Energy Project v. NRC*, 975 F.2d 871 (D.C. Cir. 1992). In cases involving financial or commercial information that was supplied voluntarily to the government, Exemption 4 applies if the provider would not customarily release the information to the public. *Id.* at 879-880. *See also, TKR Cable Company of Ramapo*, 11 FCC Rcd 3538 at 3538 (1996).

¹⁵*National Exchange Carrier Ass'n, Inc.*, 5 FCC Rcd 7184 (1990) (quoting *Nat'l Parks and Conservation Ass'n v. Kleppe*, 547 F.2d 673, 680-81 (D.C. Cir. 1976)).

¹⁶47 C.F.R. § 0.459(b)(3).

¹⁷*Mobile Relay Associates*, 14 FCC Rcd 18919, 18922 (WTB, 1999).

8. We find, however, that AS&S's request for confidentiality of the other information marked as "confidential" in its LOI response is overbroad and fails to comply with the standards set forth in Section 0.459 of the Rules. The Commission's rules make clear that casual requests for confidentiality that do not comply with the requirements of Section 0.459 will not be considered.¹⁸ Further, the LOI explicitly warned that requests for confidential treatment must comply with the requirements of Section 0.459, including the standards of specificity mandated by Section 0.459(b), and that the Bureau will not consider confidentiality requests that do not comply.¹⁹ Although AS&S seeks confidentiality for its product serial numbers and specifications, this information is publicly available on its website and was also previously available on the website of its distributor, Sandown. Similarly, while AS&S requested confidential treatment of a letter from a customer concerning one of its cell phone jammers, the Division staff observed that this letter was previously posted on the website of AS&S's distributor, Sandown. AS&S also requested confidentiality of its responses to questions concerning when it began manufacturing and marketing the cell phone jammers, where AS&S manufactured the devices, and whether or not it continues to manufacture these devices. Because AS&S did not explain the degree to which this information is commercial or financial or contains a trade secret as required by Section 0.459(b)(3), or explain how disclosure of such information could result in substantial competitive harm as required by Section 0.459(b)(5), we deny its request for confidentiality of this information.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to Sections 0.111, 0.311, 0.459(c) and 0.459(d)(2) of the Rules,²⁰ that the Confidentiality Request filed on March 25, 2005 by Antenna System and Supplies, Inc. **IS GRANTED IN PART AND DENIED IN PART** as described herein.

10. **IT IS FURTHER ORDERED**, pursuant to Section 0.459(g) of the Rules, that Antenna System and Supplies, Inc. may file an application for review of this denial with the Commission within five (5) working days of this *Order*.

11. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent via facsimile, first class mail and certified mail, return receipt requested, to Sheldon L. Epstein, Esq., counsel for Antenna System and Supplies, Inc., P.O. Box 400, Wilmette, Illinois 60091-0400.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey
Chief, Spectrum Enforcement Division
Enforcement Bureau

¹⁸ See 47 C.F.R. § 0.459(c).

¹⁹ LOI at 3.

²⁰ 47 C.F.R. §§ 0.111, 0.311, 0.459(c) and 0.459(d)(2).